

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of: |) | |
| |) | |
| Time Warner Entertainment-Advance/Newhouse Partnership |) | CSR 5729-E |
| |) | |
| |) | |
| Petitions for Determination of Effective Competition in Dunedin (FL0482), Oldsmar (FL0716), Safety Harbor (FL0233), and Tarpon Springs (FL0488), Florida |) | |

MEMORANDUM OPINION AND ORDER

Adopted: April 1, 2002

Released: April 11, 2002

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Time Warner Entertainment-Advance/Newhouse Partnership (“Time Warner”) has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2) and (4) and 76.907 of the Commission's rules for revocation of the certification of the Cities of Dunedin, Oldsmar, Safety Harbor, and Tarpon Springs, Florida (“The Cities”) to regulate basic cable service rates due to the presence of effective competition in The Cities.¹ Time Warner alleges that its cable systems serving The Cities is subject to effective competition pursuant to Sections 623(a)(2) of the Communications Act of 1934, as amended (“Communications Act”),² and the Commission's implementing rules,³ and is therefore exempt from cable rate regulation. Time Warner claims the presence of effective competition in The Cities stems from the competing services provided by Verizon Media Ventures, Inc. d/b/a Verizon Americast (“Verizon”), a franchised cable operator that is an affiliate of a provider of local exchange carrier (“LEC”) services in The Cities. Time Warner further asserts that, in view of the multi-channel video services provided in The Cities by direct broadcast satellite services and by Verizon, it is also subject to effective competition as defined in the statutory “competing provider” test.⁴ No opposition to this petition was filed.

¹ See Public Notice, Cable Services Bureau Registrations; Special Relief and Show Cause Petitions, Report No. 0011, dated August 24, 2001.

² 47 U.S.C. § 543(a)(2).

³ 47 C.F.R. § 76.905(b)(2) and (4).

⁴ The sale by Verizon Communications of its cable systems in Florida and California to Verizon Communications Corporation has been announced. See <http://www.tvinsite.com/multichannelnews/index.asp?layout+print-page&doc-id+&articleID+CA2> (3/20/2002).

II. DISCUSSION

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁵ as that term is defined by Section 76.905 of the Commission's rules.⁶ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁷ Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent (15%) of the households in the franchise area.⁸ Turning to the first prong of this test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁹ Time Warner has provided evidence of the advertising of DBS service in media serving the franchise areas.¹⁰ With respect to the issue of program comparability, we find that the programming of the DBS providers and that of Verizon satisfies the Commission's program comparability criterion because each offers at least 12 channels of video programming, including at least one non-broadcast channel.¹¹ We find that Time Warner has demonstrated that The Cities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

3. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Time Warner has provided information showing that it has 10,490 subscribers in Dunedin, 2,700 subscribers in Oldsmar, 3,580 subscribers in Safety Harbor, and 6,176 subscribers in Tarpon Springs, while Verizon has 3,714, 822, 2,105, and 2,042 subscribers, respectively in these communities.¹² The DBS providers serve 3,105 households in Dunedin, 2,265 households in Oldsmar, 2,172 households in Safety Harbor, and 1,286 households in Tarpon Springs.¹³ These data establish Time Warner as the largest MVPD provider in each of The Cities.

4. Time Warner provided 2000 Census data showing 17,258 households in Dunedin, 4,536 households in Oldsmar, 7,084 households in Safety Harbor, and 9,067 households in Tarpon Springs.¹⁴ Comparing the above noted Verizon subscriber data with the households data, we find that Verizon had

⁵ 47 C.F.R. § 76.906.

⁶ 47 C.F.R. § 76.905.

⁷ See 47 C.F.R. §§ 76.906 & 907.

⁸ 47 U.S.C. § 543(l)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

⁹ See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

¹⁰ Time Warner Petition at 12 and Exhibits K & L.

¹¹ *Id.* at 12-13 and Exhibit I.

¹² *Id.* at 13-14 and Exhibit M.

¹³ *Id.* at 13-14 and Exhibit N.

¹⁴ *Id.* at 13 and Exhibit O.

penetration rates of 21.5% in Dunedin, 18.1% in Oldsmar, 29.7% in Safety Harbor, and 22.5% in Tarpon Springs.¹⁵ Based on these findings of Verizon penetration rates in excess of 15% in each of The Cities, we conclude that Time Warner has also satisfied the second prong of the “competing provider” test with respect to each of The Cities. Verizon’s subscribership levels satisfy the 15% penetration threshold in each of The Cities, making it unnecessary to consider the subscribership of the DBS providers. Based on the foregoing, we conclude that Time Warner has submitted sufficient evidence demonstrating that its cable systems serving The Cities are subject to effective competition under the “competing provider” effective competition test.¹⁶

III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the petition for revocation of the certifications of the Cities of Dunedin, Oldsmar, Safety Harbor, and Tarpon Springs Florida to regulate basic cable service rates in those cities, and for a determination of effective competition in the Cities of Dunedin, Oldsmar, Safety Harbor, and Tarpon Springs, filed by Time Warner **IS GRANTED**.

6. **IT IS FURTHER ORDERED** that the certifications pursuant to Section 76.910 of the Commission’s rules¹⁷ of the Cities of Dunedin, Oldsmar, Safety Harbor, and Tarpon Springs to regulate basic cable service rates in those cities **IS HEREBY REVOKED**.

7. This action is taken pursuant to delegated authority pursuant to Section 0.321 of the Commission’s rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Media Bureau

| ¹⁵ Franchise Area | Verizon Subscribers | 2000 Census Households | Verizon Penetration |
|------------------------------|---------------------|------------------------|---------------------|
| Dunedin | 3,714 | 17,258 | 21.5% |
| Oldsmar | 822 | 4,536 | 18.1% |
| Safety Harbor | 2,105 | 7,084 | 29.7% |
| Tarpon Springs | 2,042 | 9,067 | 22.5% |

¹⁶ Having found Time Warner subject to competition under the competing provider test, we need not address the showing directed toward the LEC test. *See also* fn 4.

¹⁷ 47 C.F.R. § 76.910.

¹⁸ 47 C.F.R. § 0.321.